

ORDER NO. 25-120

ENTERED Mar 27, 2025

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2368

In the Matter of

PACIFICORP, dba PACIFIC POWER,

Application for a Waiver of OAR
860-038-0640

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on March 27, 2025, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.



BY THE COMMISSION:

A handwritten signature in blue ink, appearing to read "Alison Lackey".

Alison Lackey
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

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cross-subsidization between competitive operations and regulated operations, access to transmission and distribution facilities, joint marketing practices, and other issues. OAR 860-038-0640 requires that electric companies file a verified report prepared by an independent third party regarding the electric company's compliance with OAR 860-038-0500 through 860-038-0620 for the prior two calendar years. The verified report detailing compliance must be filed by June 1 of each odd-numbered year.

Analysis

Summary of Company's Reasons for Waiver

In its Application, the Company provides the following reasons for approving a waiver of OAR 860-038-0640:

1. Circumstances remain substantially similar from the previously granted requests for waiver of compliance with OAR 860-038-0640. Specifically, the Company sought a similar waiver for the 2011, 2013, 2015, 2017, 2019, 2021, and 2023 compliance years. The Commission granted waivers in Order No. 11-134 (Docket No. UM 1527), Order No. 12-423 (Docket No. UM 1624), Order No. 14-354 (Docket No. UM 1705), Order No. 17-037 (Docket No. UM 1800), Order No. 20-474 (Docket No. UM 2130), and Order No. 22-457 (Docket No. UM 2258) respectively. The Commission granted a partial waiver in Order No. 19-101 (Docket No. 1982), extending the audit report filing requirement until June 1, 2020, to review compliance in years 2018 and 2019.
2. In 2020, PacifiCorp engaged KPMG to audit its compliance with the Code of Conduct, covering the years 2018 and 2019. KPMG reviewed all aspects of the Code of Conduct, interviewed key personnel, reviewed documentation, reviewed critical processes, and then prepared a report based on these assessments. The report found the Company in compliance with the Code of Conduct and that despite no Oregon affiliates or competitive operations, PacifiCorp still had several policies, procedures, and actions that support compliance.¹
3. Each of the Company's previously filed reports found that the Company complied with the Code of Conduct. Specifically, prior to 2009, for each odd-numbered year, PacifiCorp enlisted an independent third party to review compliance with the Code of Conduct and filed a report detailing such compliance with the Commission. The third-party reviewer typically interviewed key personnel, reviewed documentation, reviewed critical processes, and then prepared a report based on these assessments. The Company filed these reports by June 1 in

¹ Docket No. RE 183, An Audit of PacifiCorp's Affiliate Rules Compliance per OAR 860-038-0640 at 3-5 (June 2, 2020).

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2003, 2005, 2007, and 2009, and 2020. Each of the reports found the Company in compliance with the Code of Conduct

4. The Company employs robust and thorough business practices to ensure it maintains compliance with the Code of Conduct. Customer service representatives and regional business managers receive targeted training that pertains to customer-related issues and the Code of Conduct. Each October, before the Direct Access enrollment period, a group of call center representatives are selected to receive targeted training. Customer inquiries about Direct Access are then routed to the specific representatives trained to answer questions. Regional business managers also work with Direct Access subject matter experts when addressing specific Direct Access issues. Subject matter experts are available to assist with Direct Access and Code of Conduct issues. Subject matter experts include representatives from the Company's regulation, legal, and customer service departments. Other key personnel receive training regarding non-discriminatory access to transmission and distribution facilities, and marketing materials through Federal Energy Regulatory Commission (FERC) Standards of Conduct training, conducted within 30 days of commencing employment with PacifiCorp. All employees must also take the FERC Standards of Conduct training each year.
5. PacifiCorp did not have any Oregon affiliates during the period that would be covered by the report due June 1, 2025, thereby lowering the risk that PacifiCorp would be found inconsistent with the Code of Conduct.² In Docket No. UM 1527, the Commission Staff report, dated April 5, 2011, recommending approval of the 2011 compliance audit waiver agreed "...that the risk of non-compliance with the rules is significantly mitigated..." with the lack of Oregon affiliates. Staff made similar findings in its reports to the Commission in Docket Nos. UM 1705 and UM 1982.
6. In the August 16, 2016, Staff Audit Report of PacifiCorp (Audit Number: 2016-01), Staff conducted an extensive operational audit over the third and fourth quarters of 2015, including the submission of 173 data requests and a PacifiCorp presentation by finance and operations teams during a Staff site visit. Among the items reviewed were affiliate transactions and cost allocations with reliance on PacifiCorp's Annual Affiliate Interest report. There were no issues noted regarding affiliate relationships or cost allocations. Further, in the

² Note that PAC's assessment regarding Oregon affiliated relies on OAR 860-038-0005(44), which was in effect in 2020 but is no longer in effect. OAR 860-038-0005(44) defined an Oregon affiliate as "an affiliate engaged in the sale or marketing of electricity services or directly related products in an Oregon retail market." In 2023, changes to OAR 860-038-0005 included removal of this definition from the Division 38 rules. See Docket No. AR 651, Notice of Proposed Rulemaking (Feb. 24, 2023).

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Company's 2013 general rate case, Docket No. UE 263, Commission Staff members performed a thorough review and analysis of all elements in PacifiCorp's filing, noting no issues with affiliate relationships or cost allocations.

7. The Commission maintains the opportunity to review the Company's relationships and transactions with affiliates through various mechanisms. PacifiCorp annually files an affiliated interest report, which provides details of transactions with all affiliates. Granting a waiver of the Code of Conduct third-party review and report requirement will not impede the Commission's ability to request information or investigate potential issues.

Summary of Staff's Analysis

Staff reviewed Commission Order Nos. 11-134, 12-423, 14-354, 17-037, 20-474, and 22-457, granting PacifiCorp a waiver of OAR 860-036-0640 for 2011, 2013, 2015, 2017, 2021, and 2023 filing years, respectively. As stated in Staff's memo to the Commission, attached as Appendix A to Order No. 11-134, "Staff previously reviewed the Company's Code of Conduct compliance reports submitted in 2003, 2005, 2007, and 2009, and agrees that the Company was in compliance with the Code of Conduct rules."

Staff notes that in Docket No. UM 1982, PacifiCorp again requested a waiver of the same rule, for the June 1, 2019, compliance requirement. However, the request was denied and instead, the Company was granted an extension,³ per their own proposal.⁴ In denying the full waiver, Staff noted that while the Company had provided additional background on Code of Conduct training in 2016, 2017, and 2018, PacifiCorp had not conducted or contracted any related compliance audits prior to 2009, a ten-year gap in compliance reviews. Additionally, a 2018 OPUC legislative report highlighted developing trends and new technologies related to Direct Access.⁵ To this end, Staff conferred with PacifiCorp and affirmed the need for a baseline audit considering the changing landscape around Direct Access.

KPMG performed the third-party audit for PacifiCorp's compliance with OAR 860-031-0500 through 860-038-0620 for the audit period of January 1, 2018 through December 31, 2019, and submitted the results to the Commission on June 1, 2020. Staff reviewed the KPMG audit as part of its analysis in Docket

³ See Docket No UM 1982, *In the Matter of PacifiCorp Application for Waiver of OAR 860-038-0640, Compliance Filing Requirements*, Order No. 19-101 (Mar. 21, 2019).

⁴ The Company related it contracted with an independent auditor to meet similar requirements for California and proposed delaying Oregon's audit report until June 1, 2020, in order to coordinate the Oregon audit with the next California audit performed in early 2020.

⁵ Oregon Public Utility Commission, *SB 978 Actively Adapting to the Changing Electricity Sector*, September 2018, available at <https://www.puc.state.or.us/Renewable%20Energy/SB978LegislativeReport-2018.pdf/>.

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No. UM 2130, confirming KPMG's findings of PacifiCorp's compliance with the Direct Access Code of Conduct for 2018 and 2019.⁶ In general, Staff found KPMG's statements showed that PacifiCorp was at minimal risk of non-compliance with the Code of Conduct, demonstrated consistency with administrative rule, and did not have any Oregon affiliates or competitive operations related to Direct Access during the audit period, thus continues to further minimize the risk of non-compliance.⁷

The 2020 KPMG audit appears to illustrate both compliance on the part of PacifiCorp and the absence of any substantial changes to the Company's Direct Access operations. PacifiCorp's previous reports, including the 2020 KPMG audit, and waivers demonstrate the Company's consistent compliance with the Code of Conduct. As such, Staff agrees that the Company's reasons for the waiver of OAR 860-038-0640 for June 1, 2023, are still valid and demonstrate "good cause".

As part of this docket, Staff reviewed the changes to the ORS outlining the Direct Access Code of Conduct, resulting from House Bill 2021, and reviewed the updated rules created in Docket No. AR 651. Staff specifically reviewed changes to ORS 757.464 and found no immediate changes to the statutory law which would impact PacifiCorp's compliance waiver. Staff also notes that the Commission is currently investigating Direct Access across all utilities in Docket No. UM 2024. To the extent that this investigation will provide additional information into utility Direct Access programs and potential modify some standards and practices, Staff finds a waiver for the June 1, 2025, reasonable. Depending on the degree to which the Company's Direct Access programs change as a result of UM 2024, Staff may find merit in the audit requirement on Code of Conduct compliance in subsequent years. Staff also maintains authority to monitor and investigate PacifiCorp's compliance with the Code of Conduct if ongoing Commission investigations yield modifications to direct access programs and practices.

Conclusion

Staff finds that the risk of PacifiCorp's non-compliance with OAR-038-0640 is low and acknowledges Company compliance with the Direct Access Code of Conduct as recently as 2018 and 2019 as determined by an independent third party. Staff agrees with the Company and with Staffs' prior conclusions that the risk of non-compliance is minimal due to the Company's internal processes in place.

⁶ See *Generally* Docket No. RE 183, *PacifiCorp Direct Access Code of Conduct Audit*.

⁷ *Id.*

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PROPOSED COMMISSION MOTION:

Approve PacifiCorp's, dba Pacific Power, request for waiver of the compliance requirement contained in OAR 860-038-0640 for June 1, 2025.

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